

TITLE 23. WATERS

DIVISION 2. DEPARTMENT OF WATER RESOURCES

CHAPTER 5.1 WATER CONSERVATION ACT OF 2009

**Article 1. Industrial Process Water Exclusion
In the Calculation of Gross Water Use**

NOTICE OF PROPOSED RULEMAKING

**Certificate of Compliance Rulemaking
Related to Emergency Rulemaking File #2010-1207-01E**

NOTICE IS HERBY GIVEN that the Department of Water Resources (hereafter Department) proposes to adopt the proposed regulation described below after considering comments, objections, and recommendations regarding the proposed action.

PROPOSED REGULATORY ACTION

This proposed regulation is a Certificate of Compliance rulemaking following the Emergency rulemaking file #2010-1207-01E.

The Department proposes to add Chapter 5.1, Article 1, Sections 596, 596.1, 596.2, 596.3, 596.4, and 596.5. to Title 23, Division 2 of the California Code of Regulations.

These proposed sections set forth criteria and methods for exclusion of industrial process water from the calculation of gross water use for purposes of urban water management planning. The regulation would apply to all urban retail water suppliers required to submit an Urban Water Management Plan, as set forth in the Water Code, Division 6, Part 2.6, Sections 10617 and 10620.

OPPORTUNITY FOR PUBLIC COMMENT

WRITTEN COMMENT PERIOD

The opportunity to submit written comment begins February 23, 2011 and closes April 18, 2011.

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action.

Submit written comments to either:

Kent Frame
Department of Water Resources
901 P Street, Suite 313A
Sacramento, CA 95814
kframe@water.ca.gov

Gwen Huff
Department of Water Resources
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Sacramento, CA 95814
ghuff@water.ca.gov

PUBLIC HEARINGS

The Department will also hold two public hearings. These hearing will be held in accordance with the requirements set forth in Government Code section 11346.8.

April 13, 2011

9:00am to 12:00pm

Hearing Room
Bonderson Building
901 P Street
Sacramento, CA 95814

April 18, 2011

9:00am to 12:00pm

Room US 1-102
Metropolitan Water District
700 North Alameda Street
Los Angeles, CA 90012

AVAILABILITY OF MATERIALS

The following materials are available for public review throughout the public comment period:

- Text of Proposed Regulation
- Notice of Proposed Rulemaking
- Initial Statement of Reasons
- Materials Relied Upon
- Form 400
- Form 399
- Final Statement of Reasons (when it is prepared)
- Final Text of Regulation

These materials may be viewed by either:

Visiting the Department's website

<http://www.water.ca.gov/wateruseefficiency/sb7/committees/urban/u5/>

Or arranging an in-person review. Please contact Gwen Huff.

Gwen Huff

Department of Water Resources

901 P Street, Suite 313A

Sacramento, CA 95814

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(916) 651-9672

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the hearing and considering all timely and relevant comments received, the Department may adopt the proposed regulations substantially as described in this notice. If the Department makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Department adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of Gwen Huff at the address indicated above. The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

MATERIALS RELIED UPON

1. 2010 Wastewater Permit Application
City of Modesto 2010
http://www.ci.modesto.ca.us/public/forms/env_comp/2006_ww_discharge.pdf
2. California Green Building Standards Code – 2010
California Code of Regulation Title 24, Part 11
http://www.documents.dgs.ca.gov/bsc/CALGreen/2010_CA_Green_Bldg.pdf
3. Carbon Footprint of Commercial New Construction
California Business Property Association Oct 2008
<http://www.cbpa.com/documents/CBPA%20AB%2032%20-%20Title%2024%20Carbon%20Footprint%20Study.pdf>
4. Cooling Towers
Center for Disease Control Updated April 2009
http://www.cdc.gov/healthywater/other/industrial/cooling_towers.html
5. Discussion Paper – Methods and Criteria for Excluding Process Water
Department of Water Resources November 2010
6. Electronic Code of Federal Regulations 2010
<http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=f8d1ea4b5ac69f51df3805e726760>
7. Handbook of Water Use and Conservation
Amy Vickers 2001
8. Increasing Water Efficiency in California's Commercial, Industrial, and Institutional (CII) Sectors
NRDC May 2009
<http://www.nrdc.org/water/cacii/files/cacii.pdf>

9. Industrial Wastewater Permit Application Form and Instructions
City of Los Angeles 1995
<http://www.ci.la.ca.us/san/wastewater/pdfs/prmapp.pdf>
10. Industrial Water Use
USGS Modified March 2010
<http://ga.water.usgs.gov/edu/wuin.html>
11. Median Income and Poverty Status, 2000 Census
US Department of Commerce, Bureau of Census
http://www.dof.ca.gov/html/fs_data/stat-abs/documents/D21.pdf
12. Methodologies for Calculating Baseline and Compliance Urban Per Capita Water Use,
Department of Water Resources October 2010
<http://www.water.ca.gov/wateruseefficiency/sb7/docs/methodologies-urban-per-capita-water-use-10042010.pdf>
13. National Handbook of Recommended Methods for Water Data Acquisition 11.F. Industrial
USGS 1997
<http://pubs.usgs.gov/chapter11/chapter11F.html>
14. North American Industry Classification System 2007
<http://www.census.gov/cgi-bin/sssd/naics/naicsrch?chart=2007>
15. Sacramento Regional County Sanitation District Pretreatment Program
2009 Annual Report
<http://www.srscsd.com/pdf/iws-2009annrpt.pdf>
16. Solutions for Sustainable Water Savings
General Electric 2007
http://www.gewater.com/pdf/Capabilities%20Brochures_Cust/Americas/English/Bulletin1040en.pdf
17. Waste Not, Want Not: The Potential for Urban Water Conservation in California
The Pacific Institute 2003
Industrial and Commercial Water Use, Appendix C
http://www.pacinst.org/reports/urban_usage/appendix_c.pdf
Details of Industrial Water Use and Potential Savings by Sector, Appendix F
http://www.pacinst.org/reports/urban_usage/appendix_f.pdf
18. Wastewater Discharge Permit
East Bay Municipal Utility District 2003
http://www.ebmud.com/sites/default/files/pdfs/industry_0.pdf

19. Watersmart Guidebook - Process Water

East Bay Municipal Utility District 2008

<http://www.ebmud.com/for-customers/conservation-rebates-and-services/commercial/watersmart-guidebook>

20. Methodologies for Calculating Baseline and Compliance Urban Per Capita Water Use for Consistent Implementation of the Water Conservation Act of 2009

21. Method 4 for Determining Water Use Targets

Department of Water Resources February 2011

AUTHORITY AND REFERENCE

The Department of Water Resources is proposing this action pursuant to the authority vested by the Water Code, Division 6, Part 2.6, Section 10608.20 (i) (1) "The department shall adopt regulations for implementation of the provisions relating to process water in accordance with subdivision (l) of Section 10608.12, subdivision (e) of Section 10608.24, and subdivision (d) of Section 10608.26."

The particular code sections that are being implemented, interpreted, or made specific are Water Code Sections 10608.20(i)(1), 10608.12 (l), 10608.24 (e), and 10608.26(d).

The Department proposes to add Chapter 5.1, Article 1, Sections 596, 596.1, 596.2, 596.3, 596.4, and 596.5. to Title 23, Division 2 of the California Code of Regulations.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

INCORPORATION BY REFERENCE

The document, Methodologies for Calculating Baseline and Compliance Urban Per Capita Water Use, DWR, October 1, 2010, and Method 4 for Determining Water Use Targets, DWR, February 16, 2011, is hereby incorporated by reference.

It is the intent of DWR that during this rulemaking process, DWR will incorporate by reference a document that is being developed by DWR. The document will specify a method for calculating urban water use targets that identify per capita use targets that cumulatively result in a statewide 20% reduction. DWR will allow for public review of this document, by way of an additional 15-day public comment period at that time.

Section 10608.24 (e) of the Water Code, below, demonstrates sufficient relationship between this regulation and the documents cited above, which are proposed for Incorporation by Reference. In order to develop water use targets, water suppliers must first calculate their baseline water use, which may or may not include process water, as per the criteria in this proposed regulation. Base Daily Per Capita Water Use is defined as average gross water use, expressed in GPCD, for a continuous, multiyear base period.

10608.24 (e) When developing the urban water use targets pursuant to Section 10608.20, an urban retail water supplier that has a substantial percentage of industrial water use in its service area may exclude process water from the calculation of gross water use to avoid a disproportionate burden on another customer sector. (Emphasis added)

SUMMARY OF EXISTING LAWS AND REGULATIONS RELATED DIRECTLY TO THE PROPOSED ACTION

The Emergency Regulation on Industrial Process Water Exclusion in the Calculation of Gross Water Use, see file # 2010-1207-01E, has been in effect beginning December 17, 2010. This proposed action is a Certificate of Compliance filing related to Emergency Regulation; file # 2010-1207-01E.

In November 2009, the Legislature enacted SBX 7-7 (Steinberg) and placed into the California Water Code a requirement that the state achieve a 20 percent reduction in urban per capita water use in California on or before December 31, 2020. *Section 10608.16. (a) California Water Code.*

In order to achieve the 20 percent reduction required by SBX 7-7, the legislation required urban retail water suppliers to develop urban water use targets and an interim urban water use target in order to achieve a cumulative 20 percent reduction in statewide water use by December 31, 2020.

These water use targets are to be included in the Urban Water Management Plans due July 1, 2011. Urban Water Management Plans are regulated by the Urban Water Management Planning Act. *Water Code, Sections 10620 (a) and 16021 (a).*

Additional regulations restrict the Department, with some exceptions, from issuing grants or loans to water agencies that have not met their water use targets. *Water Code Sections 10608.24 and 10608.56.*

Calculation of these water use targets requires, among other things, that the water supplier calculate its gross water use. The Water Code, as a result of SBX7-7, has the following stipulation about exclusion of process water from the gross water calculation:

When developing the urban water use target, an urban retail water supplier that has a substantial percentage of industrial water use in its service area, may exclude process water from the calculation of gross water use to avoid a disproportionate burden on another customer sector.
10608.24 (e) Water Code.

The legislation further directed the Department to adopt regulations for implementation of the provisions relating to process water. *Section 10608.20 (i) (1) of the Water Code.* This proposed regulation carries out this directive.

COMPARABLE FEDERAL REGULATION OR STATUTES: None

OBJECTIVES OF THE REGULATION

The effect of this proposed regulation will be to provide criteria and methods to urban retail water suppliers for the exclusion of process water use from their gross water use calculations. These calculations are required for completion of 2010 Urban Water Management Plans, due July 2011.

The Urban Water Management Plans are, in turn, the reporting and planning mechanism for urban water suppliers to meet the requirement that the state achieve a 20-percent reduction in urban per capita water use by 2020.

In order to achieve this 20-percent reduction, each urban retail water supplier shall develop urban water use targets and an interim urban water use target so that there will be a cumulative 20 percent reduction in statewide water use by December 31, 2020. These water use targets are to be included in the urban water management plans.

This regulation will ensure the legislative intent that process water may be excluded for those urban water suppliers for whom industrial water is a substantial percent of gross water use.

This part is intended to provide assistance to water agencies in carrying out their long-term resource planning responsibilities to ensure adequate water supplies to meet existing and future demands for water.

DISCLOSURES REGARDING THE PROPOSED ACTION

DETERMINATION OF NO MANDATE

The proposed regulation does not impose a mandate on local agencies or school districts.

ESTIMATE OF COSTS OR SAVINGS

<u>Costs or Savings to Any State Agency:</u>	None
<u>Cost to Any Local Agency or School District:</u>	None
<u>Other Nondiscretionary Costs or Savings Imposed on Local Agencies:</u>	None
<u>Costs or Savings in Federal Funding to the State:</u>	None

DECLARATION OF NO ADVERSE ECONOMIC IMPACT

In accordance with section 10608.32 of the Water Code, all costs incurred pursuant to this part by a water utility regulated by the Public Utilities Commission may be recoverable in rates subject to review and approval by the Public Utilities Commission, and may be recorded in a memorandum account and reviewed for reasonableness by the Public Utilities Commission.

Section 10608.26 (d) (1) of the Water Code states, "Any ordinance or resolution adopted by an urban retail water supplier after the effective date of this section shall not require existing customers as of the effective date of this section, to undertake changes in product formulation, operations, or equipment that would reduce process water use, but may provide technical

assistance and financial incentives to those customers to implement efficiency measures for process water. This section shall not limit an ordinance or resolution adopted pursuant to a declaration of drought emergency by an urban retail water supplier.”

Per Gov. Code sec. 11346.5(a)(8) This proposed action will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

ASSESSMENT OF COST IMPACTS INCURRED BY PRIVATE SECTOR

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

ASSESSMENT OF EFFECT ON JOBS/BUSINESSES: NONE

The proposed regulation for industrial process water exclusion in the calculation of gross water use will not:

- Eliminate jobs within California;
- Eliminate existing businesses within California;
- Affect the expansion of businesses currently doing business within California

REPORTS REQUIRED FROM BUSINESSES

The proposed regulation for industrial process water exclusion in the calculation of gross water use will not require any new reports. The proposed regulation will set forth new criteria and methods for existing reporting of Urban Water Management Plans.

SIGNIFICANT EFFECT ON HOUSING COST: None

SMALL BUSINESS DETERMINATION: The proposed regulations may affect small businesses.

CONSIDERATION OF ALTERNATIVES

The Department must determine that no reasonable alternative it considered or that has otherwise been adopted and brought to its attention would be more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome to affected private persons than the proposed action.

To make this determination the Department convened a workgroup prior to the submittal of the Proposed Emergency Regulation File #2010-1207-01E. The workgroup provided alternatives to the Department and advised the Department’s decision making.

The Department presented a series of draft proposals for this regulation to the workgroup. The draft proposals were based on data analysis and input from the workgroup. The fifth draft proposal became the text of the proposed regulation.

A detailed analysis of the consideration of alternatives is found in the document from Materials Relied Upon: Discussion Paper: Process, Criteria, and Methods for Process Water Exclusion DWR November 2010.

Interested persons may present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

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